

REMARKS

I. Introductory Remarks

This is a full and timely response to the outstanding final Office Action mailed November 2, 2006. Through this response claims 1, 5, 8, 10 and 13 have been amended. Claims 1–15 and 75–77 are pending in the present Application. In view of the following remarks, reconsideration and allowance of the Application and presently pending claims are respectfully requested.

II. Interview Summary

Applicant through the attorney on the record and identified below thank Examiner Alexander J. Kosowski for granting a telephone interview on December 20, 2006.

Pursuant to 37 C.F.R. § 1.133(b), the following is submitted as a complete written statement of the reasons presented at the interviews as warranting favorable action. The following statement is intended to comply with the requirements of MPEP § 713.04 and expressly sets forth: (A) a brief description of the nature of any exhibit shown or any demonstration conducted; (B) identification of the claims discussed; (C) identification of specific prior art discussed; (D) identification of the principal proposed amendments of a substantive nature discussed; (E) the general thrust of the principal arguments; (F) a general indication of any other pertinent matters; and (G) the general results or outcome of the interview, if appropriate.

On December 20, 2006, the undersigned contacted the examiner to discuss the final Office Action of November 2, 2006 and the reasons that the rejection was maintained in view of the prior amendment. The examiner indicated that the claimed invention does not correspond to Applicant's arguments. (A) No exhibits were shown or discussed; (B) the independent claims were discussed, in particular certain aspects relating to how the claims differ from the cited references, the *Horst* publication (U.S. Publication No. 2003/0233201) and the *Mason* publication (U.S. Publication No. 2004/0113810); (C) the *Horst* publication and the *Mason* publication were discussed; (D) no proposed amendments were officially presented or discussed, but the discussion centered around the end device making the decision and that no central device was necessarily making decisions for local devices and circumstances; the claim amendments presented in this paper are consistent with the discussion; (E) the general thrust of the discussion

was as set forth below in the next paragraphs; (F) no other matters were discussed; and (G) no agreements were reached regarding the claims and the examiner indicated that Applicants should amend the claims to more clearly indicate that an end device is making decisions and to submit an RCE.

The amendments herein and comments that follow are intended to be consistent with the discussion during the interviews.

In the event that the foregoing record is not considered complete and accurate, the examiner is respectfully requested to bring any incompleteness or inaccuracy to the attention of the undersigned.

III. Response to Rejection of Claims 1–15 and 75–77 Under 35 U.S.C. § 103(a)

A. Status of Claims 1–15 and 75–77

Claims 1–15 and 75–77 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Publication No. 2003/0233201 to Horst, *et al.*, hereinafter referenced as *Horst*, in view of U.S. Publication No. 2004/0113810 to Mason, JR., *et al.*, hereinafter referenced as *Mason*. Applicant respectfully traverses these rejections. Applicant has amended independent claims 1, 8 and 10, as well as dependent claims 5 and 13, to more clearly indicate that the on-premise processor receives a message request from an end device that controls load activation, and to more clearly indicate that the end device is not necessarily a conventional or centralized load controller but rather is an end device that controls its own load, and thus, the discussion below addresses the Office Action arguments in the context of the amended independent claims 1, 8 and 10.

B. Discussion of the Rejection

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a

prima facie case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In the present case, it is respectfully asserted that a *prima facie* case for obviousness has not been established.

Independent claim 1, as amended, recites:

1. A method for energy management comprising:
receiving energy rating data at an on-premise processor transmitted by a distribution network from a host processor and storing the energy rating data in a memory, the rating data including a schedule pertaining to time and energy costs;
receiving at the on-premise processor a message from an end device requesting energy rating data, the end device controlling load activation, and wherein the message is communicated using a wireless communication link, the wireless communication link relaying the message through at least one other end device;
retrieving the energy rating data from the memory and sending a response message including the energy rating data using the wireless communications link from the on-premise processor to the end device; and
determining in the end device whether to generate an activation signal based at least in part on the energy rating data.

(Emphasis added.)

Applicant respectfully submits that *Horst* in view of *Mason* does not disclose, teach or suggest the emphasized features as highlighted in independent claim 1 above. More specifically, the combination of *Horst* and *Mason* does not disclose, teach or suggest "receiving at the on-premise processor a message from an end device requesting energy rating data, the end device controlling

load activation, and wherein the message is communicated using a wireless communication link, the wireless communication link relaying the message through at least one other end device" and "determining in the end device whether to generate an activation signal based at least in part on the energy rating data" as highlighted in the amended independent claim 1 above.

Horst appears *arguendo*, to teach a "controller in logical communication with energy consuming appliances ... permitting or curtailing energy supply to the appliances...." *Horst*, *Abstract*. Specifically, *Horst* recites that the "energy controller 410 **controls** a plurality of energy consuming devices within the residence including appliances and fixtures." *Horst*, paragraph 37. **(Emphasis added.)** Further, *Horst* recites at paragraph 40:

It is contemplated that some **devices controlled by the energy controller 410**, such as lights, may not be inherently intelligent devices. However, **such devices may still be controlled by the energy controller 410** by having an intelligent device associated with such device....

(Emphasis added.)

As indicated in the highlighted text above, *Horst* appears, *arguendo*, to teach a system in which the devices are controlled by an energy controller. There is no mention of the energy controller receiving a request for price tier information or other energy rating data from the individual device, nor of the device determining whether to generate activation signals based on decision making capabilities of the device. Neither does *Mason* remedy this deficiency.

Mason appears *arguendo*, to teach an "automated meter reading system." *Mason*, paragraph 7. Specifically, *Mason* recites at paragraph 24:

Data may be communicated between meter 131 and data collector/meter 121 over communication link 105. Similarly, data may be communicated between meter 141 and data collector/meter 121 over communication link 106. Data provided to and collected at data collector/meter 121 from meters 131 and 141 may then be provided to remote location 110 over communication link 104. Also, although not shown with reference to FIG. 2, it should be appreciated that **meter 131 and meter 141 may communicate directly with one another**, and that data collector/meter 121 may communicate to meter 131 through meter 141, using meter 141 as a repeater.

(Emphasis added.)

As indicated in the highlighted text above, *Mason* appears *arguendo*, to teach a meter reading system whereby data may be provided to a remote location directly from a meter or indirectly using other meters as repeater(s). There is however, no discussion regarding receiving a request for price tier information or other energy rating data from the meter(s), nor of the meters determining whether to generate activation signals based on decision making capabilities of the meter(s).

Thus, the proposed combination of *Horst* and *Mason* fails to disclose, teach or suggest the features of independent claim 1, as amended. For similar reasons, the proposed combination of *Horst* and *Mason* fails to disclose, teach or suggest the features of independent claims 8 and 10, as amended. Because independent claims 1, 8 and 10 are allowable over the proposed combination, dependent claims 2–7, 9, 11–15 and 75–77 are allowable as a matter of law for at least the reason that dependent claims 2–7, 9, 11–15 and 75–77 contain all elements, features and limitations of independent claim 1. *See, e.g., In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

In summary, it is Applicant's position that a *prima facie* case for obviousness has not been made against Applicant's claims 1–15 and 75–77. Therefore, it is respectfully submitted that each of these claims is patentable over *Horst* in view *Mason* and that the rejection of these claims should be withdrawn.

Application No. 10/729,532
Amendment dated February 1, 2007
Reply to Final Office Action of November 2, 2006

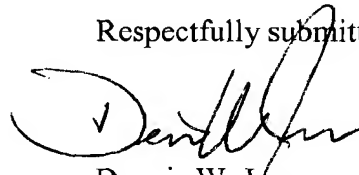
CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-15 and 75-77, are in condition for allowance. Favorable consideration and allowance of the present Application and all pending claims are hereby courteously requested.

If, in the opinion of the Examiner, there are any issues that can be resolved by telephone conference, or if there are any informalities that may be addressed by an Examiner's amendment, the Examiner is invited to call the undersigned attorney at (404) 233-7000.

The Commissioner is hereby authorized to charge any fees due, or credit any overpayment, to Deposit Account No. **50-3537**.

Respectfully submitted,



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February 1, 2007

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